

**TRILLION PARTNERS, INC.**  
**SERVICES AGREEMENT**



This Services Agreement ("Agreement") is made by Trillion Partners, Inc. ("Trillion") and Customer effective on the Effective Date indicated below. In consideration of the mutual promises and covenants contained herein the receipt and sufficiency of which are acknowledged, the parties represent, warrant, covenant, and agree as follows:

**1. DEFINITIONS.**

- 1.1 **"Commencement Date"** means the date that Service commences as indicated in writing by the Acceptance Certificate, attached hereto as Exhibit A, signed by Customer and Trillion.
- 1.2 **"Common Carrier"** means an entity designated by the Universal Service Administrative Company as an "eligible telecommunications carrier," or "eligible telecommunications provider," or "ETP."
- 1.3 **"Customer Demarcation Point"** means the physical location at which Trillion terminates its equipment and makes the Services available for use by the Customer (also known as a "Demarc").
- 1.4 **"Effective Date"** means the date this Agreement becomes a binding and enforceable agreement as indicated below and which is acknowledged as such by Trillion and Customer by placing their signature on this Agreement.
- 1.5 **"Equipment"** means all of the hardware and software used by Trillion, in its sole discretion, to enable the provision of Services to Customer and communications services to third parties.
- 1.6 **"E-Rate Program"** means the Universal Service Fund for Schools and Libraries established by the Federal Communications Commission, and administered by the Schools and Libraries Division of the Universal Service Administrative Company, or any successor funding program ("Schools and Libraries Division").
- 1.7 **"Renewal Term"** means the period of time following the initial Term. This Agreement is extended automatically for one (1) year terms (each, a "Renewal Term") until terminated pursuant to Section 7.
- 1.8 **"Term"** means the period beginning on the date of acceptance as indicated in writing on the Certificate of Acceptance and continuing for a period of one (1) year, and shall automatically renew for one (1) year Renewal Terms, unless terminated pursuant to Section 7.
- 1.9 **"Service Location(s)"** means the location(s) specified in the Description of Services at which the Trillion service is delivered to a single Customer Demarcation Point for each listed site.
- 1.10 **"Services"** means Trillion's services described in the Description of Services.
- 1.11 **"Service Outage"** means loss of service other than any outage that: a) is not reported by Customer to Trillion within (5) days of the occurrence; b) is less than (15) minutes in duration; c) is attributable to Trillion's scheduled maintenance; d) is attributed to related third party circuits (whether ordered by Trillion or Customer); e) is a result of inability to access customer premise; f) is a result of Customer's equipment or users; or g) is due to Force Majeure (see Section 8 below) or by any other cause not within the control of Trillion.
- 1.12 **"Site Access"** means 24 hour a day, 365 day a year access to Customer's premise provided to Trillion in order to restore service or perform preventative maintenance.
- 1.13 **"Total Service Charge – All Sites"** means the total service charge for all sites (sometimes referred to as the "pre-discount amount") listed in the Description of Services before any discounts are applied.

**2. DESCRIPTION OF SERVICES.**

- 2.1 **Provision of Services; License.** Trillion will provide the Services as described in the Description of Services. Customer grants to Trillion an exclusive, non-revocable license ("*License*") to use those parcels of real property at the Service Locations that Trillion deems necessary to install, operate and maintain certain poles and antennas thereon and to place certain buildings or enclosures thereon and such other equipment as Trillion determines may be necessary or compatible with the conduct of Trillion's business. Notwithstanding any other provision of this Agreement, it is expressly understood that all rights granted to Trillion under this License are continuous, ongoing, and irrevocable after the expiration or earlier termination of this Agreement, any Amendment thereto, or the provision of the Services, for so long as Customer owns or leases such real property, but only to the extent permitted by law. Trillion is authorized to use the Equipment and real property for any activity in connection with the provision of other communications services as Trillion determines may be necessary or compatible with the conduct of Trillion's business. Trillion may make any substitutions to or modifications of the Equipment as it determines may be necessary or compatible with the conduct of Trillion's business. In addition, Customer grants to Trillion a non-exclusive right to install transmission cables and lines between the Equipment and between the Service Locations in connection with Trillion's use, maintenance, and operation of the Equipment.
- 2.2 **Installation.**
  - (a) **Installation of Equipment.** In the event any equipment (or any portion of the Equipment) is or becomes physically affixed or attached in any manner to real estate at the Service Location (including any building on such real estate), in no event will the Equipment be deemed to be affixed to or a part of such real estate. Rather, the Equipment is and will remain Trillion's personal property. At the request of Trillion, Customer will furnish a landlord or mortgage waiver with respect to the Equipment from any person claiming an interest in any personal or real property where the Equipment is located. As a common carrier, Trillion may utilize the Trillion owned equipment to serve other customers.
  - (b) **Use of Subcontractors.** Customer acknowledges that Trillion may provide the Services using subcontractors, and that Trillion reserves the right to substitute such subcontractors with others, in its own discretion, to maintain or enhance maintenance performance hereunder.

**TRILLION PARTNERS, INC.**  
**SERVICES AGREEMENT**



**3. CUSTOMER OBLIGATIONS.**

**3.1 Troubleshooting & Repair.** Trillion typically validates network access from the building interface to the Main Distribution Frame ("MDF") within the building. The Customer is responsible for the Local Area Network ("LAN") connectivity, DHCP, internal DNS, and routing.

- (a) The Customer must provide local LAN IP routing and Ethernet for the service connection.
- (b) The Customer is responsible for service and repair of all LAN equipment and district owned fiber that is being utilized for service. (e.g., each fiber, switch, hub, bridge, etc.) that connects to the Trillion network.

**3.2 Access to the Services.** Customer agrees to monitor the use of the Services to prevent inappropriate use as well as unauthorized access to offensive or restricted sites, and to maintain and prevent unauthorized access to confidential information, including the confidentiality of any passwords and account information required for access to Services. Customer will promptly notify Trillion of any unauthorized or inappropriate use of the Services, including the Equipment, breach of security, or other damage, loss or theft. For the Customer Demarcation Point, Trillion will provide a single device or fiber-based interface to make the connection to the Customer's equipment. Customer is responsible for all internal LAN routing.

**3.3 Lawful Use.** Customer agrees: (a) that Services may be used solely by those entities listed in the Description of Services as being eligible to participate with Customer in obtaining the Services; (b) not to provide the Services to non-eligible third parties whether by lease, rental, transfer, assignment, sale, sublicense, or any other means, including commercial time-sharing, rental, or service bureau use; (c) not to use the Services for any purpose that is unlawful, not contemplated or prohibited by this Agreement; and (d) to abide by all applicable local, state, and national laws and regulations, including but not limited to those related to the environment and the E-Rate Program.

**3.4 Acceptance and Invoicing.** Customer agrees to promptly sign the Certificate of Acceptance when Customer and Trillion determine that Trillion has completed its work. If Customer fails or refuses to timely sign and return such acceptance form, Trillion reserves the right to send written notification of the commencement of service and an invoice for Services, and, notwithstanding Section 1.1 above, such stated date of commencement of service shall become the Commencement Date. Customer agrees to pay invoices as of the Commencement Date. Initial invoices will be sent upon execution of such acceptance form or on the date such written notice from Trillion is sent, whichever is earlier.

**3.5 Alterations and Improvements.**

- (a) Customer will not make any alterations, additions, or improvements to the Equipment, or remove Equipment from a Service Location without Trillion's prior written consent. If Customer commits any act or omission, or plans to commit any act or omission, which may cause material harm to Trillion's network, Customer agrees to compensate Trillion for such harm. If Trillion determines such harm requires the moving of a tower, fiber line, or other Equipment, Customer will compensate Trillion for such harm by paying to Trillion the cost of such move upon written invoice from Trillion. Customer shall not be responsible for the cost of moving such Equipment if the Equipment must be moved solely due to reasons reasonably within Trillion's control.
- (b) Customer is responsible for locating pre-existing facilities of other providers, such as utilities and underground facilities, including the cost for such locating, in addition to those listed in the Description of Services.

**4. FEES AND PAYMENT TERMS.**

**4.1 Fee Payments.**

- (a) **Non-Recurring Charge:** Upon execution of this Agreement, Trillion will invoice Customer a Non-Recurring Charge if specified in the Description of Services.
- (b) **Service Fee:** Customer shall pay Trillion the Monthly Total Service Charge – All Sites – Before E-Rate listed in the Description of Services for a Quarterly period as invoiced by Trillion within thirty (30) days of the receipt of an invoice for such amount each year during the Term. Customer is permitted to apply to the E-Rate Program for reimbursement for such payments using the Billed Entity Applicant Reimbursement ("BEAR") form as promulgated by the Federal Communications Commission (also known as FCC Form 772). Trillion may assist Customer as requested and reasonably appropriate with the preparation and filing of Customer's application for reimbursement for such annual payment.

**4.2 Change Orders:** Customer will be responsible for the cost of moving a tower, site or Equipment if Trillion determines that such move is necessitated by the actions of Customer and result in additional charges to Trillion. A Trillion Change Order Form shall be properly completed by Customer and submitted to Trillion to modify, reduce, or increase the equipment or services to be provided. Such Change Order Form shall be deemed a part of this Agreement if signed by both parties. Unless specified in the Change Order Form, this Agreement shall continue in full force and effect in all respects.

**4.3 Payment Terms:** All fees due under this Agreement will be paid in U.S. dollars within thirty (30) days after the date of Trillion's invoice, by a check sent to Trillion. Any overdue payments will bear a late payment fee of one and a half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, from the original payable date until paid. Work performed which is outside the scope of this agreement, or is the subject of a Change Order, will be billed at Trillion's cost with a standard 20% markup.

**4.4 Taxes.** Customer agrees to pay taxes of any kind, including sales, use, withholding, and other similar federal, state or local taxes (collectively referred to as "Taxes"), imposed on Customer in connection with the Services provided under this Agreement. Customer further agrees to keep the Equipment free and clear of all levies, liens, taxes and encumbrances. If Customer fails to pay any such Taxes or like charges when due, Trillion reserves the right to make such payments or like charges, together with all penalties and interest which may have been added because of Customer's delinquency or default, and Customer will promptly reimburse Trillion for any amounts so paid. Applicable taxes, including sales taxes, if any, are the responsibility of the Customer.

**TRILLION PARTNERS, INC.**  
**SERVICES AGREEMENT**



4.5 **Lawful Payments.** Notwithstanding any provision to the contrary contained in this Agreement, it is understood and agreed that the payments to be made in each fiscal year during the Term hereof are payable only out of current designated and lawfully appropriated funds of Customer for that fiscal year.

4.6 **Extensions and Upgrades.** The parties agree that extensions to the term of this Agreement are expressly authorized and shall not require a new bid. The parties agree that upgrades, improvements, additional sites, and enhancements to the Services are expressly authorized and any amendment hereto to effectuate such upgrades, improvements, additional sites, and enhancements shall not require a new bid as long as the amendment reasonably relates to the Services. Any amendment hereto shall be in writing signed by both parties following good faith negotiations.

**5. WARRANTY.**

**5.1 By Trillion.**

- (a) Trillion warrants that it will use commercially reasonable efforts to make the Services available to Customer in accordance with generally accepted standards in the unlicensed spectrum wireless industry. For additional information on this, please see attached Service Level Agreement. This warranty will apply solely to access to the Services, and will not apply to anything (1) caused by factors outside of Trillion's reasonable control; (2) that resulted from any action or inaction of Customer or any third party; (3) that resulted from scheduled maintenance or required repairs; or (4) that resulted from equipment, software or any item not provided by Trillion. All consequences for a breach of this warranty by Trillion are strictly limited to those defined in the attached Service Level Agreement.
- (b) **NO OTHER WARRANTY.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5.1(a), TRILLION PROVIDES SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. TRILLION DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TRILLION DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE, OR THAT DEFECTS IN THE OPERATION OF THE SERVICES WILL BE CORRECTED. THE PARTIES AGREE THAT ALL CONSEQUENCES FOR A BREACH OF WARRANTY BY TRILLION ARE STRICTLY LIMITED TO THOSE DESCRIBED IN THE ATTACHED SERVICE LEVEL AGREEMENT.

**5.2 By Customer.**

- (a) Customer represents, covenants and warrants that (1) Customer is a fully constituted political subdivision, agency or public corporation of the state in which it is located; (2) the execution, delivery, and performance by Customer of this Agreement have been duly authorized by all necessary action on the part of Customer; (3) this Agreement has been executed on behalf of Customer by persons who constitute duly authorized officers thereof; (4) this Agreement constitutes the legal, valid, and binding obligation of Customer enforceable in accordance with its terms; (5) Customer has complied with all public bidding, notice and hearing requirements where necessary, and by due notification presented this Agreement for approval and adoption as a valid obligation on its part; (6) Customer reasonably believes that funds can be obtained sufficient to make all payments during the Term. The officer of Customer responsible for budget preparation will do all things lawfully within his/her power to obtain, maintain and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his/her bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. Customer shall give Trillion immediate notice of Customer's intent to terminate this which shall be the end of the last of Customer's fiscal years for which appropriations for the payments were made; (7) Customer has obtained all services from its local exchange telephone service provider (other than Trillion) to ensure it has full access to 911 services; and (8) Customer will provide the required level of electricity to each facility provided by Trillion which requires electricity.
- (b) Customer shall not engage in any activity or construct any new structure, which may interfere mechanically, electrically, or operationally with the Equipment.
- (c) Because Trillion must obtain certain permits, licenses, or waivers to perform the Services and Customer would be the necessary applicant for such, Customer grants limited authority to Trillion to act as Customer's agent for the sole purpose of obtaining all permits and licenses, or waivers thereof, which are necessary for Trillion to perform under this Agreement. To the extent such grant of authority is invalid or inconsistent with applicable law, or to the extent Trillion is unable to obtain such permits, licenses, or waivers, Customer warrants that it has obtained or waived, or will obtain or waive in a timely manner, all permits, and licenses applicable to the Services. Customer expressly warrants that it will not directly or indirectly obstruct, hinder, or cause the delay, denial, or modification of any regulatory approval, license, or repeater site acquisition which Trillion determines is required for the Services so that the Services are, in Trillion's sole determination, incapable of being provided as agreed herein.
- (d) Customer shall promptly deliver to Trillion copies of any and all correspondence, notices, and forms received from Schools and Libraries Division that apply to Trillion's Services no later than three (3) days after Customer received such document.
- (e) Customer acknowledges that Trillion is not responsible for the satisfactory performance, or lack thereof, of any third party content filtering. Customer further acknowledges that it (and not Trillion) is responsible for establishing, implementing, and/or utilizing any and all practices and procedures, rules, and other methods necessary to prevent any (i) unauthorized use of the Equipment by any person, and (ii) any access by Customer (and its students, employees, agents and contractors) at the Service Locations or by means of the Equipment to web sites, web pages, emails, or email attachments that may be inappropriate.
- (f) Failure of Customer to meet a listed obligation in an agreed Statement of Work or adequately remove a listed condition precedent to Trillion's performance shall be considered a material breach of this Agreement and shall relieve Trillion of its

**TRILLION PARTNERS, INC.**  
**SERVICES AGREEMENT**



obligations hereunder, but shall not relieve Customer of its obligation to timely pay upon invoice. Customer must provide a safe, secure, and adequately prepared area for Trillion's work, including but without limitation, staging, installation, and storage.

- (g) Customer shall promptly execute and return to Trillion all documents acceptable to Trillion including but without limitation, the following:
- (i.) a certified Board Resolution authorizing the negotiation, execution and delivery of this Agreement;
  - (ii.) an Opinion of Customer's Counsel stating that: Customer is authorized and has power under State law to enter into this Agreement; that the authorization, approval and execution of this Agreement have been performed in accordance with all open meeting laws, public bidding and all other applicable State and Federal laws; and that the opinion may be relied upon by Trillion Partners, Inc. and its successors and assignees;
  - (iii.) a Certificate of Incumbency signed by the Clerk or Secretary of the Board certifying that the person signing this Agreement is a duly elected or appointed officer of the Customer;
  - (iv.) Prior three (3) audited financial statements.

**6. LIMITATION OF LIABILITY AND REMEDY.**

6.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE UNDER ANY THEORY, INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, DAMAGES FOR LOSS OF DATA, LOSS OF USE OF COMPUTER HARDWARE, DOWNTIME, LOSS OF GOODWILL, LOSS OF BUSINESS, OR COMPUTER HARDWARE MALFUNCTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL TRILLION'S LIABILITY TO CUSTOMER UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO TRILLION FOR THE PARTICULAR SERVICE WHICH IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE IMPOSITION OF SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT THE OTHER PARTS OF THIS AGREEMENT RELY UPON INCLUSION OF THIS SECTION. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations listed in this Section 6.1 fully apply only to the extent permitted by law.

6.2 **Disclaimer of Actions Caused by or Under the Control of Third Parties.** Trillion does not and cannot control the flow of data to or from Customer's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Trillion agrees to use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events. However, Trillion cannot guarantee that such events will not occur or that Trillion will be able to remedy all of them. Accordingly, Trillion disclaims any and all liability resulting from or related to such events.

6.3 **INDEMNITY.** Each party agrees to hold the other, including its officers, directors, shareholders, representatives, affiliates, employees, and assignees free and harmless from, and fully and completely indemnify each of them from and against, any obligations, costs, claims, judgments, reasonable attorneys' fees, and attachments to the extent arising out of any action of the party or failure of the party to act under this Agreement, except to the extent arising from the negligent, reckless or willful misconduct of the other or its agents as determined by a court of competent jurisdiction.

6.4 **BINDING ARBITRATION.** All controversies, disputes, or claims between the parties or any of their respective officers, directors, agents, employees and attorneys, arising from or relating to this Agreement shall on demand of either party be submitted for arbitration to the American Arbitration Association ("AAA"). The arbitration shall be governed exclusively by the United States Arbitration Act (9 U.S.C. § 1, et seq.), without reference to any state arbitration statutes. The parties agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedures) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, shall be barred. The arbitration proceedings shall be conducted in Austin, Texas and shall be conducted in accordance with the commercial arbitration rules of the AAA in effect on the date of this Agreement, except as modified by this Agreement. Three arbitrators shall be used. Each party shall have the right to select one arbitrator from a panel provided by the AAA and those two arbitrators will then select a third arbitrator, also from the AAA panel. The parties shall be entitled to limited discovery at the discretion of the arbitrators who may, but are not required to, allow depositions. The parties acknowledge that the arbitrators' subpoena power is not subject to geographic limitations. The arbitration proceedings shall be conducted on an individual basis and not on a multi-plaintiff, consolidated, or class-wide basis. The arbitrators shall have the right to award the relief, which he or she deems proper, consistent with the terms of this Agreement, including compensatory damages (with interest on unpaid amounts from date due), specific performance, injunctive relief, legal fees and costs. The award and decision of the arbitrators shall be conclusive and binding on all parties, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the United States Arbitration Act. The provisions of this Section 6.4 shall continue in full force and effect subsequent to and notwithstanding expiration or termination of this Agreement.

6.5 EACH OF THE PARTIES EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL OR COURT ACTION COMMENCED BY ANY OF THE PARTIES TO ENFORCE, COLLECT, DEFEND, ENJOIN, OR THAT OTHERWISE RELATES TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS HEREIN CONTEMPLATED OR DESCRIBED. LIKEWISE, EACH PARTY WAIVES ANY RIGHT TO HAVE A JURY TRIAL IN ANY SUCH LEGAL OR COURT ACTION FOR ANY DEFENSE, CLAIM OF SET-OFF, CLAIM OF RECOUPMENT, COUNTERCLAIM OR THIRD PARTY ACTION ASSERTED OR RAISED IN ANY SUCH LEGAL OR COURT ACTION. ANY LEGAL OR COURT ACTION RELATING TO THIS AGREEMENT OR THE TRANSACTIONS HEREIN CONTEMPLATED OR DESCRIBED SHALL BE TRIED EXCLUSIVELY BEFORE A COURT



**TRILLION PARTNERS, INC.**  
**SERVICES AGREEMENT**



WITHOUT A JURY. CUSTOMER AND TRILLION SPECIFICALLY ACKNOWLEDGE THAT THEIR EXECUTION OF THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT FOR THEIR ENTERING INTO THIS AGREEMENT.

**7. TERMINATION; RENEWAL.**

**7.1 Termination for Cause.**

- (a) By Trillion. During the term of this agreement, if Customer fails to substantially comply with the terms of this Agreement, if the assumptions and contingencies stated herein are not met as determined by Trillion, Trillion may terminate this Agreement without liability to Customer by providing Customer with ninety (90) days prior written notice that describes the reason for termination. In the event that Trillion commences to cure and diligently pursues cure, any attempted termination by Customer shall be void and of no force and effect. Trillion may provide written notice of such cure efforts.
- (b) By Customer.
  - (i.) If Trillion fails to substantially provide the Services as warranted, Customer may terminate this Agreement without liability to Trillion for any future payments by providing Trillion with ninety (90) days prior written notice that describes the breach. In the event that Trillion commences to cure and diligently pursues cure, any attempted termination by Customer shall be void and of no force and effect. Trillion may provide written notice of such cure efforts.
  - (ii.) If the E-Rate Program is terminated in its entirety, Customer may either negotiate in good faith with Trillion to extend the term of the Agreement with appropriate terms, or Trillion may, in its sole discretion, authorize Customer in writing to terminate this Agreement effective at the end of the then current fiscal year.
  - (iii.) Trillion reserves the right to report any such early termination or default to all credit or bond rating entities, and pursue all rights and remedies at law or in equity. Such termination shall not affect or reduce the term of the License described in Section 2.1 of this Agreement.

**7.2 Renewal; Effects of Termination.**

- (a) Renewal. The Term of this Agreement is automatically extended on a month to month basis at Trillion's adjusted month to month pricing unless either party provides written notice of termination to the other party at least one hundred eighty (180) days prior to such termination, or Customer provides written notice of an automatic renewal pursuant to a Renewal Term.
- (b) Non-Appropriation; Duty to Present to Board. Notwithstanding any other provision of this Agreement, Customer agrees that it may not terminate this Agreement to the extent any funds are proposed in the budget of the Customer for the Services, for the fiscal period in which such termination occurs, or the next succeeding fiscal period thereafter. The officer of Customer who is responsible for financial matters of Customer shall include a request for appropriations to the governing body of Customer for full payment under this Agreement each year during the Term.
- (c) Common Carrier Rights Unaffected. Upon any termination, Trillion is expressly authorized to enter upon the premises of the Service Location where the Equipment is located, and take immediate possession of and remove such electronic Equipment. Alternatively, Trillion may, in its sole discretion, opt to leave the Equipment at the Service Location so that it may continue to provide services to others. In such event, Trillion is expressly permitted to continue to install and maintain the Equipment as set forth in Section 2.1. In such instance, Customer is obligated to provide ongoing power and access to facilities and Trillion agrees to pay the reasonable pro-rata share of Customer's actual power cost plus 20% on an annual arrears basis.

**8. GENERAL PROVISIONS.**

- 8.1 Governing Law and Jurisdiction. This Agreement will be exclusively governed and construed in accordance with the laws of the State in which Customer's main headquarters is located. The parties also agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be brought within one (1) year after such claim or cause of action arose or be forever barred. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party.
- 8.2 Use of Customer's Name. Trillion may use Customer's name as a customer, including a general description of the services provided to Customer by Trillion, in its resumes, client lists, case studies, and in other promotional information including, but not limited to, press releases, brochures, reports, letters, white papers and electronic media such as e-mail or Web pages.
- 8.3 No Agency; Assignment. Except as expressly provided in Section 5.2(c) of this Agreement, nothing in this Agreement is intended, or should be construed, to create a partnership, agency, joint venture, or employment relationship between Customer and Trillion. Each party is an independent contractor for the other party. Customer may not assign or sublicense the rights granted under this Agreement. Trillion may assign and reassign in whole or in part, its rights, title and interests, but not its obligations, under this Agreement, including the right to receive Customer's payments hereunder, to one or more assignees at any time subsequent to its execution, without the necessity of obtaining the consent of the Customer. Customer agrees to acknowledge any such assignment and to make all payments to the assignee designated in such assignment until such assignee shall advise Customer otherwise. Customer acknowledges that Trillion's assignee shall have the right to cure any Trillion default, and to otherwise provide the Services hereunder.
- 8.4 Force Majeure. A party is not liable for non-performance to the extent to which the non-performance is caused by an event that is not within the reasonable control of the affected party, including, without limitation, war, riots, civil insurrection or acts of a common enemy, fire, flood, strikes or other labor difficulty, acts of civil or military authority, including governmental laws, orders, actions, inactions or regulations, embargo, and the party gives reasonably prompt notice to the other party and makes all reasonable efforts to perform. In no event will this provision affect Customer's obligation to make timely payments for Services rendered, whether used or not, under this Agreement.

**8.5 Assumptions and Contingencies.**

- (a) Trillion is relieved of its obligation to provide the Services if certain preconditions to installation which are outside the control of Trillion do not occur. Examples of such preconditions include the issuance of all applicable permits and other regulatory approvals under terms and conditions acceptable to Trillion, and the acquisition of any necessary repeater sites from third parties under terms and conditions acceptable to Trillion. If such preconditions do not occur, Trillion will either renegotiate with the Customer or offer to terminate this Agreement with no termination penalties for either party. Additional assumptions included in this subsection 8.5 (a) may be listed in the Description of Services.
- (b) Trillion's obligation to perform under this Agreement are based and contingent on, among other things, the engineering assumptions that:
  - (i.) Trillion will be able to obtain the necessary permits, repeater sites required for line of site RF transmission and ground rights necessary to provide the proposed service.
  - (ii.) Customer will provide necessary ground rights at a location suitable for both customer and Trillion that provide proper line of site and serviceability of the equipment.
  - (iii.) The Customer will provide electricity to the specified location in an amount which Trillion indicates is necessary to deliver Trillion Service
  - (iv.) Trillion will be able to acquire the licensed frequencies required for any designated licensed spectrum necessary to deliver service.
  - (v.) The Customer will be providing all internal (local area network) layer 3 routing equipment, service, and support.
  - (vi.) To the extent line of site is required between two or more given sites, there is no obstruction between the sites which occurs after this Agreement is signed but before acceptance.
- (c) Non-Public Works Projects Only: Because the Customer has not declared this to be a "public works project," the prices listed do not include costs associated with paying prevailing wages. This is an agreement to allow Trillion to perform necessary work to provide its services only and is not an agreement for the construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work to any publicly owned, leased or operated plant, building, structure, ground facility, utility system, road, or other public improvement of any kind.

**8.6 Notices, Written Consents.** Except where provided otherwise, notices and written consents will be in writing and will be deemed to have been fully given and received (1) when delivered personally; (2) when sent by confirmed fax; (3) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (4) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt. Notices, written consents, and payments will be sent to the parties at the addresses set forth in the signature block below or such other address as either party may specify in writing to the other.

**8.7 Conflicting Terms; Survival.** If there is a conflict among the terms in this Agreement and any subsequent amendment, the terms of the subsequent amendment shall control. Customer's obligations under this Agreement, including without limitation the obligation to pay for Services, shall begin on the date the Customer executes an acceptance certificate applicable to the Services specified therein. The latest date of acceptance shall be the Commencement Date. The terms of any sections which by their nature are intended to extend beyond termination will survive termination of this Agreement for any reason.

**8.8 No Waiver; Severability; Section Headings.** The failure of a party to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. The section headings in the Agreement and Summary section in the Description of Services are solely for the convenience of the parties and have no legal or contractual effect, except to the extent described in Section 1.8.

**8.9 Entire Agreement.** This Agreement, including the Exhibit(s), constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement does not affect, and is independent of, any previous agreement between the parties regarding the provision of services not contemplated in this Agreement. Any previous agreement between the parties shall continue in full force and effect, and shall be renewed on a month to month basis until the Commencement Date of this Agreement. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. Any attempted E-Rate SPIN change during the Term without the express prior written authorization of Trillion shall be void. No handwritten alterations to the printed text of this Agreement are valid, whether initialed or not. The parties acknowledge that this Agreement was entered into following good faith, arms-length negotiations. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects, however, Trillion requires Customer to sign and return two originals.

**[Description of Services Begins on Next Page.]**

## DESCRIPTION OF SERVICES



### E-rate Information

Service Provider: ..... Trillion Partners, Inc.

SPIN Number:..... 143025872

E-Rate Contact Number: . (512) 334-4100

#### E-Rate Notes For On-Premise WAN Services

- A. Equipment belongs to Trillion and if it is physically located on a particular school site, it is only used as an integral component of the eligible Services listed herein.
- B. On-premise equipment which is used by Trillion to provide the Services listed herein is provided by Trillion and not by another service provider.
- C. Responsibility for maintaining the equipment rests solely with Trillion, not the Customer, and not with another provider.
- D. Trillion's equipment will not transfer to the Customer in the future, and as clearly indicated in this agreement, Customer does not have an option to purchase the equipment.
- E. All upfront, capital charges of Trillion's on-premise equipment are less than 67% of the total charges (recurring plus non-recurring).
- F. On-premise equipment will not be used by the Customer for any purpose other than to receive the eligible services listed herein.
- G. The Local Area Network, if any, is functional without dependence on Trillion's equipment.
- H. As indicated in this agreement, there is no contractual, technical, or other limitation that would prevent Trillion from using its network equipment in part for other customers.

### DESCRIPTION OF SERVICES: Telephone Services – Trillion Centrex VoIP

#### Trillion Centrex VoIP Service by Site List

Alomogordo	Analog Phone Service	IP Phone Service	Voicemail Only	Extension Only	LEC Analog Trunks*	T1 / PRI Access (T1=24 ports)	911 Circuit Access (required)
District Office	0	60	0	10	2	1	1
Academy del Sol Alt	0	15	0	1	1	0	1
Alamogordo HS	0	60	0	6	2	0	1
Buena Vista ES	0	5	0	1	1	0	1
Chaparral MS	0	20	0	1	1	0	1
Heights ES	0	20	0	1	1	0	1
High Rolls Mtn ES	0	5	0	1	1	0	1
Holloman Int	0	10	0	1	1	0	1
Holloman MS	0	10	0	1	1	0	1
Holloman Primary	0	5	0	1	1	0	1
La Luz ES	0	20	0	1	1	0	1
Mountain View MS	0	50	0	1	1	0	1
North ES	0	20	0	1	1	0	1
Oregon ES	0	20	0	1	1	0	1
Sacramento ES	0	20	0	1	1	0	1
Siewrra ES	0	20	0	1	1	0	1
Yucca ES	0	6	0	1	1	0	1
Warehouse	0	6	0	1	1	0	1
Total	0	372	0	32	20	1	18
Total Voice Ports:							466

\*Includes support for fax lines and additional lines requested by the customer

## DESCRIPTION OF SERVICES



### Service Description

Service:

#### Trillion Centrex VoIP Services

Pricing for voice services is quoted on a "Per Voice Port" basis. Voice Ports may be added at any time at Pre-E-Rate \$33 per port per month, subject to Trillion approval, under a separate non E-Rate agreement. Note that customer may seek E-Rate funding for additional voice ports during the next E-Rate application cycle.

Contract Term in Years  
Estimated E-Rate Discount  
Number of Sites  
Total Voice Ports

1, with four optional one-year renewals  
80%  
18  
466

Voice Services	Before E-Rate		After E-Rate	
	Month	Annual	Month	Annual
Installation Charge Per Voice Port	\$0.00	\$0.00	\$0.00	\$0.00
Total Service Charge - All Voice Ports	\$8,490.58	\$101,887.02	\$1,698.12	\$20,377.40
Total Service Charge per Voice Port (breakdown) (Not an additional charge)	\$18.22	\$218.64	\$3.64	\$43.73
Total Service Charge per Site (breakdown) (Not an additional charge)	\$471.70	\$5,660.39	\$94.34	\$1,132.08
Customer Payments to Trillion	\$8,490.58	\$101,887.02		

To enter into the Services Agreement for the Services referenced ON THIS PAGE, sign below.

#### TRILLION PARTNERS, INC.

##### "TRILLION"

9208 Waterford Centre Blvd., Suite 150  
Austin, TX 78758

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_

*Scott Smyth*  
SCOTT SMYTH  
VY LEGAL & REGULATORY  
February 5, 2007

#### ALAMOGORDO PUBLIC SCHOOLS

##### "CUSTOMER"

Address: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Philip Knight*  
PHILIP KNIGHT  
Superintendent  
2/4/2007



## SERVICE LEVEL AGREEMENTS

Each Service Level Agreement Below Is Applicable To Such Services Listed In The Description of Services



### Digital Transmission Service - Wide Area Network Service Level Agreement

**Support Service.** Trillion's goal is provide carrier class service for our customers. Support services are provided for up to four authorized technical contacts that have been given access to the Trillion NOC. Trillion provides the ability to receive and process support cases 24x7x365. Hours of operation phone and online support are from 7 a.m. to 7 p.m. Central time, with emergency outage support 24 hours a day, seven days a week. The Trillion Network Operations Center is staffed 24x7 for proactive network monitoring and WAN system management services.

**Service Metrics.** Trillion will respond and begin corrective action when the following service specifications drop below the identified threshold for a given site

- (1) Service Availability: Availability drops below 100%
- (2) Latency: Average Round trip Latency exceeds 30ms
- (3) Packet Loss: Average Packet loss is greater than 1%
- (4) Mbps: Throughput is 90% of the total bandwidth contracted for each site
- (5) Customer Support: Trillion's goal is to provide a NOC support contact within a two hour average response time to any customer submitted support request
- (6) On-site Service: Trillion's goal is to dispatch a field technician within one hour of service outage verification is the service cannot be restored remotely.

**Scheduled Maintenance:** Trillion will notify customer 48 hours in advance of any scheduled maintenance. Trillion at its sole discretion will apply necessary maintenance patches or upgrades necessary to resolve critical issues and ensure the service specifications are being met

**Penalty for Service Availability Non-Compliance:** For a given calendar month, within which Trillion experiences a Service Outage, Customer may request a service outage credit. In order to be eligible for the credit, Customer must log a service credit case within five (5) business days of the outage with verification by Trillion of the event. Trillion will apply a service credit based on a pro-rated calculation of the amount of time the service was unavailable to the affected site during that month.

### Trillion Telephone Service - Centrex – Voice Over IP Service Level Agreement

**Support Service.** Trillion's goal is to provide carrier class service. Support services are provided for up to four authorized technical contacts that have been given access to the Trillion NOC. Trillion provides the ability to receive and process support cases 24x7. Hours for standard hours of operation are from 6 a.m. to 6 p.m. Central time, with emergency support 24 hours a day, seven days a week. The Trillion Network Operations Center is staffed for 24x7 network monitoring and WAN system management services.

**On-site Service.** Trillion provides onsite dispatch services if required to regain service. On-site dispatch is normally initiated in less than one hour after it has been determined that on-site assistance is required.

**Corrective Action.** Trillion will respond and begin corrective action when the following drops below the identified threshold for a given contracted WAN site. Performance of the Local LAN is not monitored nor corrected by Trillion

- (1) Centrex IP Service Availability drops below 100%
- (2) Packet loss between locations is greater than 1%

#### Availability Monitoring

Three monitoring cycles of no response shall constitute service unavailability and will trigger initiation of proactive outage notification procedures by Trillion. The proactive outage notification process involves notifying the Trillion NOC 24x7 for corrective action. If requested Trillion will deliver notifications to the Customer's specified point of contact via email alert and or phone call.

**Product Updates.** Trillion at its sole discretion will apply necessary maintenance patches or upgrades necessary to resolve critical issues. Trillion will maintain necessary backups of configuration files required to regain service in the event of equipment failure. Customer Voice mail files are the responsibility of the customer to backup to an alternate file server on premise if required.

#### Other Customer Obligations for Telephone Service – Centrex – Voice Over IP Service (also referred to as "Centrex IP").

Unless otherwise specified by Trillion, Trillion does not provide Ethernet switches, power, uninterruptible power supply equipment, or power over Ethernet Switches for IP phones.

Customer is required to purchase Trillion supported IP based phones to be used with the Centrex IP service.

Unless otherwise specified by Trillion, Customer is responsible for: 1) providing all analog phones and/or handsets; 2) placing all analog phones and/or IP phones and or handsets; 3) installing Personal Call Manager on Customer's computers; and 4) any connection to any Customer owned/leased legacy phone equipment. Customer may make a request that Trillion provide any of these under a Trillion Change Order Form at an additional cost.

Customers LAN must pass the Trillion network assessment that will be performed prior to service activation. If Customer declines to comply with the recommendations of a Trillion Network Assessment, Customer will be required to sign a waiver acknowledging such. The Customer shall assume all responsibility all voice quality issues. Trillions service provides Centrex IP services to a single Demarc location at a core MDF to each school and is not responsible for voice quality caused by LAN related issues.

Customers LAN equipment must be capable of prioritizing voice traffic and ensuring adequate quality of service necessary for voice operations. This includes zero packet loss, latency less than 50ms and zero jitter. Customer will be responsible for resolving LAN issues not meeting these specifications.

All Customer trouble reports, requiring an on-site visit by Trillion service employees, that are the result of Customer's own failure to maintain minimum requirements for call manager client computers, LAN, cabling, rack space, power, and ventilation will be billed at the Standard Billing Rate.

Customer is required to take all appropriate action to meet Customer's safety needs. Customer must obtain a voice grade line that includes 911 (E-911) access for each of Customer's locations from its local telephone service provider. Trillion is not responsible for providing this separate voice grade line from Customer's local telephone service provider.

Customer is required to maintain 911 (E-911) database with the local PSAP.

In the event that Trillion LEC Coordination services are not purchased by Customer, Customer is responsible for: ordering, installation, and cut-over of desired telephone company services including analog and/or digital trunks, DIDs, etc.; ensuring all telephone company services are provisioned accurately and installed on-time in accordance with the Trillion project implementation schedule; and ensuring all telephone company services are delivered, and extended if necessary, to the same physical location of Trillion's voice equipment, installed on-time in accordance with the Trillion project implementation schedule. Due to the fact that Trillion LEC Coordination services require much collaboration and shared responsibilities with the Customer, if such services are purchased by Customer, the parties' respective obligations will be determined at that time.

Trillion recommends that all IP phones be equipped with backup uninterruptible power supplies to extended survivability in the event of a power outage, this is typically done via a dedicated uninterruptible power supply for the phone or Power Over Ethernet ("POE") via Power over Ethernet patch panels or Power over Ethernet switches. It is Customer's responsibility to provide backup uninterruptible power supply power for any and all IP Phones.

Customer is required to provide all Coordinated Dialing Plan's and Call Flow. This should include all Intra and Inter and Long Distance dialing methods.

In the event that the Customer requests music on hold, it is the Customer's responsibility to install and provide a music on hold source to the system in a 8 bit 8Khz ccitt ulaw format.

Cabling toning and or documentation required for analog or IP phones is a separate service. Unless specifically requested and ordered by Customer, Trillion is not responsible for cabling any analog or IP phones.

## ACCEPTANCE CERTIFICATE

Customer certifies that the Equipment and Services which are set forth in the Services Agreement dated and effective as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between Customer and Trillion Partners, Inc., are accepted by Customer as of \_\_\_\_\_, 200\_\_\_\_, which for purposes of the Services Agreement shall be the Commencement Date for the Services Agreement. Customer agrees to promptly certify the payment schedule, to be submitted by Trillion at a later date.

The School Board has conducted, or directed the signatory person below to conduct, such inspection and/or testing of the Equipment and Services as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment and Services for all purposes. School Board reaffirms their obligation to a) pay all amounts due and to become due and b) perform all other obligations under the Services Agreement, are absolute.

Trillion has provided the Services as warranted in the Services Agreement, and no event has occurred that would cause Customer to terminate the Services Agreement.

### Standard Conditions of Acceptance

If Customer utilizes the Trillion Wide Area Network services at any time in any way for the provision of voice services, then the following paragraph shall apply: We understand that Trillion has requested that we obtain a voice grade line that includes 911 access for each of our locations from our local telephone service provider (which is not Trillion). We understand that Trillion is not responsible for providing this separate voice grade line from our local telephone service provider. We certify that we will take all appropriate action to meet our safety needs, and that we have the sole responsibility to obtain service from our local telephone service provider (which is not Trillion) for access to 911 services at each of our locations. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned, Customer, its successors and assigns, agree to hold Trillion Partners, Inc., its officers, directors, shareholders, representatives, affiliates, and employees, free and harmless from, and fully and completely indemnify each of them from and against, any obligations, costs, claims, judgments, reasonable attorneys' fees, and attachments to the extent arising from or attributable to the issues raised by this paragraph.

No valid handwritten alterations have been made to the typed print of this acceptance.

\_\_\_\_\_  
"Customer"

Trillion Partners, Inc.  
"Trillion"

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_